

**LEAVE WITHOUT PAY
CONDITIONAL AND UNCONDITIONAL**

OBJECTIVE

It is the Commonwealth's objective to allow employees covered under the Virginia Personnel Act to take unpaid time off from work under specified circumstances.

I. EMPLOYEES TO WHOM POLICY APPLIES

This policy applies to positions covered under the Virginia Personnel Act to include classified and restricted employees. (See section II (A) of Policy 2.20, Types of Employment.)

II. DEFINITIONS

A. Unconditional leave without pay

An employee's approved absence from work without pay that guarantees reinstatement to the position held by the employee before the leave was taken

B. Conditional leave without pay

An employee's approved absence from work without pay (other than for military leave) that guarantees reinstatement only if the employee's position is available when he or she desires to return from leave. If the position is not available, the employee will be separated and may be employed again only after going through the normal recruitment and selection process.

C. Leave without pay effective date

The effective date of an employee's conditional or unconditional leave without pay is the first workday missed. Such leave is not reported to the Personnel Management Information System (PMIS) until the employee is on leave without pay in excess of 14 consecutive calendar days. (The effective date, however, still is reported as the first workday missed.)

III. PURPOSE OF CONDITIONAL/UNCONDITIONAL LEAVE WITHOUT PAY

A. Unconditional leave without pay

An agency may grant unconditional leave without pay for reasons that include:

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1. educational purposes that require a longer period of absence than that permitted for educational leave with pay (see Policy 4.15, Educational Leave);
 2. military purposes that require a longer period of absence than that permitted for military leave with pay (see Policy 4.50, Military Leave); and
 3. personal purposes, including illness for employees participating in the Traditional Sick Leave Program, and or for a FMLA covered absence to care for a family member. (also see Policy 4.20, Family and Medical Leave).

B. Conditional leave without pay

An agency may grant conditional leave without pay for reasons where a guarantee of reinstatement is not practical due to the agency's need to fill the employee's position. This leave without pay may be granted for the same reasons listed above for unconditional leave without pay, excluding military leave without pay.

IV. LENGTH OF CONDITIONAL/UNCONDITIONAL LEAVE WITHOUT PAY

Both types of leave are limited to a period of 12 consecutive months. However, an agency may extend leave beyond 12 consecutive months in the following situations:

1. extended disability (leave without pay may be extended up to an additional 12 consecutive months);
2. active duty with the armed forces (leave without pay may be extended up to an additional 48 consecutive months if a normal discharge, up to 48 months if hospitalized);
3. leave to pursue a course of study (leave without pay may be extended up to an additional 12 consecutive months if approved by the Director of the Department of Human Resource Management or the agency head in agencies with decentralization agreements); or
4. non-state employment that is of vital importance to the state and/or national welfare (leave without pay may be extended up to an additional 12 months if approved by the Director of the Department of Human Resource Management).

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**V. AGENCY RESPONSIBILITIES REGARDING
CONDITIONAL/UNCONDITIONAL LEAVE WITHOUT PAY**

A. Unconditional Leave

The agency of an employee who is taking an unconditional leave without pay should explain in writing to the employee the status of the employee's benefits during the unconditional leave.

B. Conditional Leave

The agency of an employee who is taking a conditional leave without pay should explain in writing to the employee:

1. that automatic reinstatement is possible only if the employee's old position is vacant;
2. that if the employee's old position is not available at the end of LWOP, the employee will be separated and that he or she may be employed again only through the normal recruitment and selection process;
3. the status of the employee's benefits during the conditional leave; and
4. the procedure for seeking reinstatement or a return to state service through the normal recruitment and selection process.

C. Agency assistance

If an employee is not reinstated at the end of the conditional leave, the agency should assist the employee in determining whether vacancies for which the employee might be qualified exist in other state agencies.

**VI. EFFECT OF CONDITIONAL/UNCONDITIONAL LEAVE WITHOUT
PAY UPON BENEFITS AND UPON INCENTIVE INCREASES**

A. Accrued leave

1. Sick leave for employees participating in the Traditional Sick Leave Program will be retained during an employee's leave without pay.

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2. Virginia Sickness and Disability Leave will be retained until January 9th. When an employee is reinstated or reemployed after January 9th, appropriate VSDP leave will be credited.
 3. Agencies have the discretion to allow employees to retain their accrued annual leave during either type of leave without pay in accordance with the provisions in Policy 4.10, Annual Leave.
 - a. An employee must be on leave without pay (for reasons other than military or layoff) for 90 consecutive calendar days before becoming eligible for the payment of annual leave.
 - b. If annual leave is paid, it must be for the total amount permitted under Policy 4.10, Annual Leave, not a portion of the accrued balances.
 4. Agencies may allow employees to retain their accrued compensatory leave, or such leave may be paid in a lump sum when employees are placed on voluntary leave without pay (not layoff) for at least three months.

B. Effect on next leave anniversary date

An employee will not accumulate leave while on leave without pay, either unconditional or conditional. After a leave without pay of 14 consecutive calendar days, the employee's next leave anniversary date for the purpose of accruing annual leave will be adjusted in accordance with the following chart:

Calendar Days on Leave Without Pay	Pay Periods Deducted
1-14	0
15-31	1
32-46	2
47-61	3
62-76	4
77-91	5
Etc.	

C. Seniority

The date for determining an employee's seniority date for purposes of layoff will not be changed by a leave without pay-layoff.

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D. Effect on incentive increases

An employee on unconditional or conditional leave without pay may have his or her incentive increase amount affected depending upon the number of hours missed from work. (For further information, see Policy 1.40, Performance Planning and Evaluation.)

E. Effect on months of service for VSDP

Time on unconditional or conditional leave without pay will not be credited as months of service for VSDP.

VII. AUTHORITY AND INTERPRETATION

This policy is issued by the Department of Human Resource Management pursuant to the authority provided in Title 2.2, of the Code of Virginia. This policy supersedes Rule 10.11, Leave Without Pay, of the Rules for the Administration of the Virginia Personnel Act, effective July 1, 1977.

The Director of the Department of Human Resource Management is responsible for official interpretation of this policy, in accordance with section 2.2-1201 of the Code of Virginia. Questions regarding application of this policy should be directed to the Department of Human Resource Management's Office of Agency Human Resource Services. The Department of Human Resource Management reserves the right to revise or eliminate this policy as necessary.